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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/771,328	01/26/2001	Menashe Shahar	23600.00901	6745

7590 09/21/2004  
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San Francisco, CA 94120-7936

EXAMINER
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TSE, YOUNG TOI

ART UNIT	PAPER NUMBER
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2637

DATE MAILED: 09/21/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/771,328

Applicant(s)

SHAHAR ET AL.

Examiner

YOUNG T. TSE

Art Unit

2637

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 26 January 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-28 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-28 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 26 January 2001 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 12182001.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## DETAILED ACTION

### *Information Disclosure Statement*

1. The information disclosure statement filed 18 December 2001 fails to comply with 37 CFR 1.98(a)(2), which requires a legible copy of each U.S. and foreign patent; each publication or that portion which caused it to be listed; and all other information or that portion which caused it to be listed. It has been placed in the application file, but the information referred to therein has not been considered.

**The copies of the non-patent literature documents C1-C13 in the PTO-1449 have not been received by the Patent Office.**

### *Drawings*

2. Figure 1 should be designated by a legend such as --Prior Art-- because only that which is old is illustrated. See MPEP § 608.02(g). Corrected drawings in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.121(d)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

3. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference sign(s) mentioned in the

description: the reference sign "140" mentioned on page 9, line 12 is not shown in Figure 2. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

4. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they include the following reference character(s) not mentioned in the description: the reference signs "100", "112", "114", "132", and "134" labeled in Figure 2 are not mentioned in the specification. Corrected drawing sheets in compliance with 37 CFR 1.121(d), or amendment to the specification to add the reference character(s) in the description in compliance with 37 CFR 1.121(b) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the

examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

5. The drawings are objected to because the block pertaining elements (10, 20, 40 and 50) in Figure 1 and (100, 110, 112 and 114) in Figure 2 need to have descriptive label, in conformance with 37 CFR 1.84(n) and 1.84(o). For example, a descriptive label of “cable modem” should be inserted into Figure 1 to properly describe element (40). Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as “amended.” If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. The replacement sheet(s) should be labeled “Replacement Sheet” in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

### ***Specification***

6. The disclosure is objected to because of the following informalities: on page 3, lines 15-18 and 24, "MMDS", "WCS", "ITFS/MMDS" and "CMTS" are undefined; on page 6, line 20, "me embodied" should be "be embodied"; on page 12, line 5, "Table" should be "Tables"; on page 29, line 17, "Applicants are requested to update the U.S. Application No.;" further, the specification fails to describe all the block elements of Figures 1 and 2 in order distinguish the difference between the prior art Figure 1 and the present invention of Figure 2 to enable a person skill in the art to understand the invention. Appropriate correction is required.

7. The lengthy specification has not been checked to the extent necessary to determine the presence of all possible minor errors. Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the specification.

### ***Claim Objections***

8. Claims 1-5, 8-21 and 23-28 are objected to because of the following informalities:

In claim 1, line 7, "a channel" should be "a downstream channel".

In claim 2, line 8, line 8, "for each" should be "for each of".

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In claim 4, line 4, "channel" should be "channels", line 5, "a selected" should be "the selected", and line 7, "the selected channel" should be "the selected downstream channel".

In claim 8, line 10, "the second wireless device" should be "a second wireless device".

In claim 10, line 4, "a plurality" should be "the plurality".

In claim 14, line 8, "for each" should be "for each of".

In claim 15, line 2, "for each of" should be "for each of the plurality of".

In claim 16, line 6, "a selected" should be "the selected".

In claim 17, line 11, "said hub" should be "said wireless hub" and line 15, "the best" should be "a best".

In claim 20, line 5, "said hub" should be "said wireless hub" and lines 13-14, "a channel clock" should be "the channel clock".

In claim 26, line 4, "a current" should be "the current".

In claim 27, line 2, "modem" should be "modem unit".

In claim 28, line 1, "modem" should be "modem unit" and line 4, "selector" should be "selection unit".

Wherein the dependent claims 3, 5, 9, 11-13, 18-19, 21, and 25 are depended upon claims 1, 8, 17 and 24.

Appropriate correction is required.

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***Claim Rejections -- 35 USC § 112***

9. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

10. Claims 1-28 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

The configuration of claims 1-28 does not correspond to the disclosure of the drawings. For example, at least the claimed subject matter of an acquisition unit, a scanning unit, a selection unit, a channel quality unit, a channel change unit, a frame error rate indicator, a re-clocking mechanism, a DCD message generator, a reception unit, a downstream channel selection unit, a transmission unit, an upstream channel selection unit, and a change channel mechanism as recited in claims 17-19 and 22-25 is not shown in Figure 2 and discussed in the specification in such a way to enable one skill in the art to make and/or use the invention. Without the discussion of the apparatus of Figure 2 in the specification, it is unable to a person skill in the art to know what elements or devices are used to perform the block elements of the flow-charts shown in Figures 3-5 as recited in the method claims 1-16.

11. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

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12. Claims 3, 6-7, 10, 14-15 and 17-28 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.



In claim 3 (line 3), claim 6 (lines 9 and 10), claim 14 (line 10), and claim 24 (lines 3-4), the phrases "the first wireless device", "the wireless hub", "the wireless modem", and "said device" all lack antecedent basis.

In claim 10, it is unclear what is the selecting step used for?

In claim 17 (line 11), claim 22 (line 7), claim 23 (line 5) and claim 24 (line 7), "DCD" and "UCD" are undefined.

In claim 18, line 3, are the "available channels" different than the "available downstream channels" recited in claim 17? and line 4, the term "each channel" is indefinite since it is unclear the "up" or "down" channel?

Wherein the dependent claims 7, 15, 19-21 and 25-28 are depended upon claims 6, 14, 17, and 23.

### ***Conclusion***

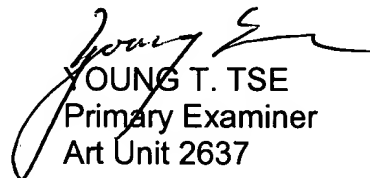
13. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Asia et al. discloses an analogous art of a system and method for remote maintenance and service of one or more wireless modems in communication with a wireless hub to instruct the wireless modem(s) to change any operational parameters in order for the wireless hub to diagnose any problems with or to improve operation of the wireless mode. However, the Asia patent has a provisional filing date on January 26, 2001 which has the same filing date of the provisional application of the instant application.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to YOUNG T. TSE whose telephone number is (571) 272-3051. The examiner can normally be reached on Monday and Wednesday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jay Patel can be reached on (571) 272-2988. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
YOUNG T. TSE  
Primary Examiner  
Art Unit 2637